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SUBJECT: YEAR 2007 SPECIAL 301 REVIEW: GREECE

REF: A. STATE 7944

B. ATHENS 2950

1. Summary. 2006 was a year of strong effort by the GoG on IPR. Responding to the IPR action plan delivered in March as a result of the 2006 Special 301 process, the GoG stepped up cooperation with local IPR representatives, created special working groups to discuss IPR problems and coordinate responses, and established a mandatory IPR course for all trainee judges. These efforts, while only a first step towards resolving a persistent problem, represent a significant achievement for a small country with limited resources. IPR violations remain a problem in Greece, and more GoG effort will be necessary to bring piracy down to "acceptable" levels. In particular, the judiciary needs increased training and coordination to ensure consistent and deterrent penalties are applied to IPR offenders. However, in light of the efforts that the GoG has made to directly address the 2006 IPR action plan, we recommend against placing Greece on the Watch List this year. Instead, we recommend another realistically structured action plan which will simultaneously reward the GoG for its efforts in 2006, while setting the bar higher for greater achievements in 2007. End Summary.

Background

2. Greece was a Watch List country from 1994 to 2003, largely because of rampant broadcast piracy in the country. This piracy was brought under control from 2001 to 2003, and while broadcast piracy is no longer a problem, other forms of IPR violations, including optical media piracy and software piracy, continue to plague the country. Although Greece has modern, adequate IPR legislation on the books, in practice, a low general understanding of IPR leads to widespread tolerance of piracy, even in the judiciary. This tolerance has meant that enforcement is not as aggressive as it might be, and penalties for violators are usually not enforced at deterrent levels.

2006 Action Plan Update

3. As a result of these enforcement difficulties, Greece was presented with an action plan to help address the areas of greatest concern to the USG and U.S. industry in the 2006 Special 301 process. This action plan has provided excellent results. Responding to the warning shot fired across its bow, the GoG has spent the last year making substantial efforts to address all the points raised. Reftel b provides an in-depth analysis of those efforts, but salient points are recapped or updated here:

(A) Judicial Training

In November, the GoG announced that Copyright and IPR protection would be made a mandatory and permanent part of

the curriculum for all judges-in-training at the National School of Judges, starting with the 2007-2008 academic year.

In August, the GoG agreed to our request to hold an IPR in-service seminar for sitting and trainee judges. This seminar, to be held at the National School of Judges in Thessaloniki in March, will include speakers from Greece's Copyright Protection Office (OPI), USPTO, and the EU.

(B) Arrests and Prosecution/Cases in a Timely Manner

Industry has reported an increase in assistance from GoG enforcement agencies, including an increase in the number of raids against the vendors of pirated goods. Industry has also favorably reported on the increased attention from the Special Tax Authority (YPEE), which has sent software license audit letters to companies that employ more than 50 workers, and which has made software license audits mandatory whenever a tax audit is performed. Additionally, YPEE (which is responsible for combating Internet fraud or piracy) has conducted multiple sting operations on behalf of a U.S. apparel company, resulting in both arrests and seizure/destruction of counterfeit material.

Prosecution of IPR offenders remains more problematic. Prosecutors are often overworked, and the court system itself is over-burdened. With requests for postponements, appeals, and other motions, it can be 2 to 3 years before a criminal IPR case is finally heard and judgment rendered. Even when judgment is finally granted, judges frequently appear to view IPR violations as "nuisance crimes," and provide minimal fines and suspended jail sentences. Although these suspensions are supposed to automatically trigger harsher penalties in the event of recidivism, the poor state of record keeping and information sharing in the Greek court system means that these prior convictions are rarely discovered and enforced. Improving the protection of IPR in the court system will remain a major task for the GoG, especially given historical factors that guarantee the judiciary tremendous independence in Greece. This will be a lengthy process.

(C) Fighting Piracy

In November, OPI formed a special coordinating committee to bring together private and public participants in the fight against IPR violations. This is the first such group of this type in Greece, and it has been very successful. In addition to providing the private sector direct access to GoG officials responsible for IPR protection and working towards the establishment of task force on enforcement, the group has undertaken public outreach activities. In December, the committee aggressively launched an anti-piracy radio spot and newspaper ad campaign to encourage holiday shoppers to avoid pirated goods and purchase legitimate products from licensed retailers.

(D) Establish Attica IPR Session Court

The majority of IPR cases in Greece are prosecuted through the criminal court system, as opposed to the civil court system. As reported in reftel b, the creation of specialized criminal courts for IPR poses significant legal questions in Greece, and may not be constitutionally possible. There are already special IPR-only courts in Attica and Thessaloniki for civil cases, each convening once a month. The GoG is considering creating a similar arrangement at the appellate level, although we do not believe such a creation is likely, as the caseload does not seem to warrant the effort. Further efforts to push the GoG to create special IPR-only criminal session courts are unlikely to bear fruit; increased IPR training for criminal judges is more likely to be successful.

(E) Work with Apparel Industry

Only one U.S. apparel company has been in contact with post, and it has reported it is satisfied with the level of support it is receiving. Although the company does have concerns,

primarily with customs enforcement, it does not yet view the problem as unsolvable through direct cooperation with the GoG. It has reported that it has received excellent GoG assistance for raids and customs inspections, and as noted earlier, even Internet sting operations. It has asked that the Embassy stand by to provide assistance, but not actively intervene on its behalf at this time.

2006 Action Plan Conclusion

¶4. There is no doubt that further action will be required to address all industry concerns, but the level of effort put forth by the GoG this year has been commendable. The action plan was remarkably successful in highlighting our concerns and providing a roadmap for the GoG to follow. We are encouraged by the process made this last year, and believe that there is still more progress to be gained by following a similar outline this year.

Notorious Markets

¶5. Although the street sale of pirated CDs, DVDs, handbags and sunglasses is fairly widespread, we are not aware of any particular centers of concentration for the sale of pirated goods.

Optical Media Piracy

¶6. Optical Media Piracy remains a concern in Greece. Pirated DVDs and CDs are widely available from street vendors, and even occasionally from music stores or DVD rental outlets. Greece has limited industrial-scale DVD and CD production, and no solid link has emerged between these facilities and piracy in the country. We have been informed that DVD-R and CD-Rs now constitute the vast majority of pirated optical media seized; these products are largely produced on home computers in small, virtually on-demand, quantities.

Software Piracy

¶7. According to industry representatives, unlicensed sharing of software continues to be the major source of software piracy in Greece. The Business Software Alliance (BSA) has been receiving increased support from the YPEE, however, including increased audit activity and new regulations requiring YPEE officials to audit software licenses whenever they conduct an official tax audit. Additionally, YPEE has promised to aggressively follow-up with companies who have failed to respond to their initial audit, as well as to conduct spot audits on a sample of those audits already received.

Use/Procurement of Government Software

¶8. The GoG officially requires that all software in use by official agencies be properly licensed. The Ministry of Interior has actively highlighted these requirements through all levels of government, although we are not aware of any specific instances of raids or other enforcement activities taking place. The GoG has also signed an agreement with Microsoft to promote the purchase of licensed copies of Microsoft products in the government, in return for expanded home-use user licenses and technical assistance programs. However, allegations continue that government offices turn a blind eye to internal piracy (generally the installation of a single licensed program on multiple machines). In the case best known to post, a U.S. software company is attempting to negotiate a solution to alleged IP violations (unlicensed software sharing) by the GoG (Greek State Employment Association). The GoG has not been responsive so far.

TRIPS Compliance and IPR Treaties

¶9. Greece is fully TRIPS compliant. Existing national legislation was bolstered with the ratification by parliament of the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT). Greece is in compliance with all

EU IPR directives with the legislative ratification of 3524/2007 Copyright Act, which is in full conformity with EU Enforcement Directive 2004/48 regarding copyright protection.

Data Protection

¶10. Post has received no negative reports on Greece's protection of test data as it relates to IPR protection. In November, we did receive a complaint about Greece's pricing board policy which was felt to constitute an infringement of patent protection. The complaint, however, was not entirely clear in its formulation, and there was no follow up to post's request for additional information.

Production, Import and Export of Counterfeit Goods

¶11. Greece is not known to be a major producer or exporter of counterfeit goods. Greece does have porous borders, however, and inadequate border and customs control. As a result, and as a Schengen member, Greece appears to be a favored port of entry for counterfeit goods to enter the EU. A percentage of these counterfeit products are sold on the local economy, but the majority are destined for more lucrative markets in Germany and France. The GoG has agreed to establish an informal working group on customs issues that will include representatives from the Ministry of Economy and the Hellenic Customs Service. The USG side will include members of the economic section, FCS, and DHS Immigrations, Customs, and Enforcement. The working group will discuss methods of cooperation to improve the Hellenic Customs Service's ability to effectively control the importation of counterfeit products.

Enforcement

¶12. Enforcement, writ broadly, remains the most difficult situation for Greece. Police assistance can be counted on in organizing raids or collecting evidence. Local industry representatives also report no major complaints regarding the assistance they receive from police or prosecutors as cases move to trial, although the process can be slow. More serious complaints are made about the judicial process, and in particular, the unwillingness of Greek judges to apply meaningfully deterrent sentences. (Note: RefTel b provides a detailed breakdown of the statistics available to post on arrests, prosecutions, and imposition of sentences.) Although the issue of judicial independence remains extremely sensitive in Greece, the GoG has taken steps to address these concerns by introducing a mandatory IPR course for all judges in training, and organizing a day-long seminar on IPR for sitting judges.

Comment

¶13. Greece does not have an unblemished record on IPR. In particular, the Greek public has a very limited appreciation for or understanding of IPR, does not generally see the issue as a criminal act, and does not widely support active IPR enforcement. The judiciary's reluctance to enforce maximum sentences for IPR violators is a reflection of Greek society's view on the issue, not an aberration. Even local IPR representatives acknowledge this, and the more proactive ones are actively engaged in public outreach programs, including special focus on elementary and secondary schoolchildren, to raise the level of IPR understanding. The GoG, through its Office of Copyright Protection, has been particularly active in this regard, working to put IPR lectures into the Greek school-system at all levels, as well as supporting IPR awareness contests for schoolchildren. This is a long-term solution, but the only one that offers a reasonable chance of eventually turning the tide on piracy in Greece.

¶14. In the short- to medium-term, the GoG's efforts in 2006 are all the more impressive because of the general population's unconcern with IPR (if not open sympathy for IPR violators, who are frequently perceived to be poor immigrants simply trying to make ends meet.) From our perspective the

2006 action plan was a remarkable success; it galvanized the GoG into action and focused them on USG and industry concerns. To place the GoG on the Watch List this year would be counterproductive as it would suggest that the 2006 action plan was never a sincere offer and that it was our intention to watch list Greece regardless of the outcome. A better answer would be to create a 2007 action plan that will move the ball forward on IPR, while acknowledging the real efforts made by the GoG so far. End comment.

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